

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION FREE CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL 142

Call to Order: By **CHAIRMAN DALE BERRY**, on April 6, 2001 at 10:30 A.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Sen. Dale Berry, Chairman (R)
Rep. Roger Somerville, Vice Chairman (R)
Rep. Paul Clark (D)
Sen. Steve Doherty (D)
Rep. Jeff Laszloffy (R)
Sen. Jack Wells (R)

Members Excused: None.

Members Absent: None.

Staff Present: Linda Keim, Secretary
Mary Vandenbosch, Legislative Staffer

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: HB 142

CHAIRMAN DALE BERRY called the meeting to order and asked for an explanation of HB 142.

REP. SOMERVILLE said the original bill dealt with both lions and bears. The House Fish, Wildlife and Parks Committee placed amendments on it limiting it to region one and took the bear language out of the bill. Amendments were offered by Fish, Wildlife and Parks (FWP) in the Senate to take out the region one language and insert language that is on page two dealing with adopting rules. The Senate passed the amendments, and when it came back to the House, he had concerns about the word "ethical". He said that he felt "ethical" hunting would be hard to define. Some people might not think it is ethical to hunt with dogs, or with a rifle as opposed to just a bow and arrow. FWP personnel

came up with the following language to insert on page 2, line 26 and page 4, line 14: "for the purpose of providing for ethical and biologically sound hunting. **REP. SOMERVILLE** said he will submit Amendment 14202 for discussion, **EXHIBIT(cch78hb0142a01)**. His amendment would strike the words "ethical and". Following the words "providing for", it would insert "improving the hunting experience, adhering to fair chase principles, and".

REP. CLARK asked if there were some of the same concerns with the words "fair chase principles". Some people would say that hunting lions with dogs is not fair chase, and its unethical.

REP. SOMERVILLE said "fair chase" is a term frequently used within FWP documents. There is a book titled "Beyond Fair Chase", copies of it were given out last session. He said he felt that was a fair term to use since it had been previously used and defined.

REP. LASZLOFFY said he has concerns about codifying "improving the hunting experience", which is a wide open term. The Montana Code in 87-301 says: "when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders for the biologically sound management of big game populations..." He said he felt that language is more appropriate than getting into "ethical, fair chase, or hunting experience" because those are more objective standards.

REP. CLARK said we need to go back to the genesis of this bill to know why this language is here. His district is region one, and he lives in hunting district 21. They have a problem because of the way these licenses are offered to the public, it is open and anyone who applies can get a license. This is a unique hunt because only 15 animals can be taken and the season is closed. The first few days are chaotic because outfitters with clients are competing with local hunters that have dogs chasing cats, and now competing with out of state hunters coming in with their dogs. They are not adhering to biologically sound principles, because in certain districts, the season is being shut down on the first day as they have already exceeded the quota. There is a social problem that needs to be addressed somehow in the bill.

SEN. DOHERTY said that for non hunters, hunting is not an ethical thing, and taking "ethical and" out does make sense. He said that the rules have to be set for the purpose of improving the hunting experience, in addition to biologically sound principles. If the situation is as described, you have all the major ingredients of a major conflict about to happen. The language that would give the commission the authority to consider the hunting experience and adhering to fair chase principles is important. With cat hunting especially, a "60 minutes" show on

that would taint hunting in general. Adhering to fair chase principles as a statement in the law would be an important statement for Montana to make with regard to cat hunting. This is a good amendment.

REP. LASZLOFFY said what he has a problem with is the change in policy on the part of the department. We are considering going from a department managing the biology of a certain species to managing experiences and social conflicts. If you go back to the beginning of 87-301, the commission has the ability to do that now, just with rule making authority. His problem is with setting this language in code and allowing the department to go in this new direction, by setting things like ethics and fair chase principles. Those are better left to rule making authority, rather than codifying them.

CHAIRMAN BERRY said the code does reference hunting, and **REP. SOMERVILLE** just wants a reference somewhere with terminology that fits what we are doing. Maybe we do need to identify hunting as an experience, that it is a Montana principle, that it is a biologically sound management principle. He said he understands the point about rule making authority, but rule making authority is still restricted by statute. He said that he would like to see it identified somewhere, and he liked the amendment.

SEN. WELLS said he understands both sides of the discussions. He doesn't like the term "adhering to fair chase principles", and he tends to agree with **REP. LASZLOFFY** about not putting that into the code. He said the "hunting" word is there, but above it is "biologically sound management", hunting is addressed. He said he would not vote for the amendment.

SEN. DOHERTY said in looking at the language of the amendment, you do want to set rules to improve the hunting experience, otherwise you won't have a market. Instead of "adhering to" fair chase principles, how about "considering" fair chase principles. They don't have to adhere, but they have to consider them.

Motion/Vote: **REP. LASZLOFFY** made a **substitute amendment to strike the language "adhering to fair chase principles"**. We are in a subjective area, and nonhunters could use that to limit hunters ability to hunt mountain lions.

Motion/Vote: **SEN. DOHERTY** made a **substitute motion to strike the word "adhering" and use "considering"**. He said the people setting the rules are the Montana FWP and the likelihood of them saying Montana residents or Montana nonresidents won't be able to hunt lions is nil. They will give due consideration to this and set the rules and maybe use this as a sword against the

nonhunters to say that we considered fair chase and this is a legitimate sport, a legitimate biological tool, and a legitimate social experience.

REP. SOMERVILLE said he would concur with the substitute motion. He said he has discussed this with Dan Vincent, region one director, who has had many conversations with people in the lion hunting community and in the guide community, and they like this language. He said he likes it even better without the word "adhering". He supports the motion.

CHAIRMAN BERRY said the committee would consider **SEN. DOHERTY's** substitute motion.

Motion/Vote: SEN. DOHERTY made a **SUBSTITUTE MOTION** to **ADOPT Amendment 14202 as it is, but to strike "adhering" and insert "considering". Motion Carried 4-2, with Sen. Wells and Rep. Laszloffy voting no.**

REP. CLARK declined to submit his original motion.

CHAIRMAN BERRY said the amendment now reads "improving the hunting experience, considering fair chase principles, and..."

REP. CLARK said he does not have a problem with the idea of "fair chase" making a statement. His goal is to preserve our hunting heritage and continue to present hunting in Montana as something that we are giving due consideration to. It is biologically sound, his initial problem was that there might be some objections that hunting lions with dogs is not fair chase. But if we are just "considering" them, that gives us some leeway.

SEN. DOHERTY said he has enough faith in the FWP commission that they will set the rules and it wouldn't be a serious threat.

REP. CLARK said he was more concerned that there would be a lawsuit against the FWP commission based on Montana Code.

REP. LASZLOFFY said what we are putting into code now may be there for 50 years. He said that we don't know what the attitudes will be then, and that is why he is hesitant to add that kind of language.

Motion/Vote: SEN. DOHERTY made a **Motion to ADOPT Amendment 14202 AS AMENDED. Motion Carried 4-2, with Sen. Wells and Rep. Laszloffy voting no.**

REP. SOMERVILLE passed out Amendments 14204, **EXHIBIT**(cch78hb0142a02), and 14205, **EXHIBIT**(cch78hb0142a03). He

said this is an issue that needs to be discussed and he would not move them at this time. He explained that the Senate committee struck out the words "region one" so that it would apply across Montana. He said he had been told that when the committee passed the bill out, they were adamant that this would apply only to region one, as the problem existed only in region one. It is a major problem in Libby during opening day of lion hunting season. His amendments would put it back in region one only, or regions one and two. He explained that if you limit it in region one, what will happen is the lions will start moving and the problem will be in both regions. Also, in the hearing before the Senate, FWP said the individual regions are not defined in code. If we put region one in, we would be putting something new into the law that could pose a problem.

Legislative Staffer Mary Vandenbosch said it is true that there is no definition of region one or region two in Montana Code. There is another issue with these amendments, as they would create special legislation. Article 5, section 12 of the constitution says that the legislature shall not have special legislation when a general act can be applied or can be made applicable. The region issue could possibly be dealt with by describing the regions or defining them. She said that there may be some issues with defining the region, because it affects everything not just this.

SEN. DOHERTY asked what the discussion was in Senate FWP. **SEN. WELLS** said that they had a discussion similar to what **REP. SOMERVILLE** addressed. He noted that **SEN. CRISMORE** is from that area, and he said if we just leave this in region one, they know the hunters will move down to the next region, and they will keep moving. That is why they decided to make it statewide. If lion hunting is going to be controlled anywhere, they should do it statewide, so they wouldn't have to come back and give the department control at a later date. They did not discuss the fact that the regions are not defined. He then asked what "administrative regions" are. He said he didn't know if they were appropriate; but maybe it could be addressed in the code by referring to the "administrative regions". He said he feels it should be kept statewide, and we should attempt to define what regions we are talking about.

REP. LASZLOFFY passed a FWP map around that listed the districts within region one. FWP put down the quota, how many were actually taken, and what date the season opened and closed. In many cases it was closed after three days, and the take was double the quota.

CHAIRMAN BERRY said he didn't understand why there was a resistance to making this statewide, and asked for clarification. Is it to chase them out of region 1? **REP. SOMERVILLE** said the biggest objection came from other lion hunters in the state who had never experienced the problem there is in Libby. The lion hunters in Libby want something done now, and the other parts of the state are concerned about a quota system being set up and then not being able to get a draw. His understanding is that the commission now has the authority and they can adopt rules in region one, but they don't have to adopt the same rules in regions two through seven if they so determine. He said that they have the latitude by this law to do it across the board, or by region, like they do other hunting.

REP. LASZLOFFY said another thing of concern is that we have a situation in region one that might be temporary. There are a large number of animals, plus the fee structure is not the same as the surrounding areas, so they have created a magnet zone. They wanted to give FWP the ability to deal with this problem right in region one where it exists, and they are talking about reassessing their fee structure. The reasons they weren't looking at regions two through three is because the population of lions isn't as large. They were hesitant to just grant power throughout the state.

CHAIRMAN BERRY said **Mary Vandenbosch** had just noted that FWP rule making authority could keep it to a particular region, and **REP. LASZLOFFY** made the point that by opening it up, we could still put that pressure on those areas that are in demand.

REP. CLARK said he was in the subcommittee that put the amendments on the bill, and he considers this to be a good bill, an important one that needs to pass. He said we need to take a step forward, whichever regions we choose. He stated he does not have a problem with giving authority to the commission to make a decision. However, there is some philosophical hesitation when it comes to FWP, and we are very selective with authority beyond what they already have. He is concerned that **REP. DAN FUCHS**, may have a problem with it, and he would hate to see it get bogged down on the floor of the House.

SEN. DOHERTY said he thinks statewide makes sense, and the commission will use good judgement. If the rules work in region one and they are starting to move people into region two, they can adopt them in region two. From the perspective about the special legislation, it makes for the statewide issue to be in the statute.

REP. CLARK pointed out that there are three new commissioners appointed by Governor Martz, and would like that to be considered.

REP. SOMERVILLE said he would withdraw amendments 04 and 05, and take them to the House floor for debate.

SEN. WELLS asked if there is a problem with region one now, if we don't put region one in the bill. Have we eliminated the problem of trying to define regions? **Mary Vandenbosch** answered yes, the bill says the commission may adopt rules to limit the number of nonresident mountain lion hunters in designated hunting districts.

REP. CLARK said earlier it was brought out that there might be a constitutional issue with limiting this to one region, when it could easily be applied to all the regions. Specifically, do you see a constitutional problem if we limit this to region one, so that the bill could possibly be thrown out? **Mary Vandenbosch** said she could never guarantee what the court will say, but article 5, section 12 of the Montana Constitution says the legislature shall not pass a special or local act when a general act is or can be made applicable. If this bill passed without a restriction to region one, and based on the criteria that have been given, the commission could adopt regulations that just affected certain hunting districts.

Motion/Vote: REP. LASZLOFFY moved that **HB 142 AS AMENDED BE CONCURRED IN AS AMENDED. Motion Carried Unanimously. 6-0.**

ADJOURNMENT

Adjournment: 11:12 P.M.

SEN. DALE BERRY, Chairman

Linda Keim, Secretary

RS/DB/

EXHIBIT (cch78hb0142aad)